



Office of the Clerk
UNITED STATES COURT of APPEALS for the NINTH CIRCUIT
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AMENDMENTS TO THE RULES
Effective January 1, 2002

<i>RULE</i>	<i>TITLE</i>	<i>New or Revised</i>
46-2	Attorney Suspension, Disbarment or Other Discipline	New
Note	Circuit Advisory Committee Note Regarding Monetary Sanctions	Revised

CIRCUIT RULE 46-2

**ATTORNEY SUSPENSION,
DISBARMENT OR OTHER DISCIPLINE**

- (a) Conduct Subject to Discipline. This Court may impose discipline on any attorney practicing before this Court who engages in conduct violating applicable rules of professional conduct, or who fails to comply with rules or orders of this Court. The discipline may consist of disbarment, suspension, reprimand, counseling, education, a monetary penalty, restitution, or any other action that the Court deems appropriate and just.
- (b) Initiation of Disciplinary Proceedings Based on Conduct Before This Court. The Chief Judge or a panel of judges may initiate disciplinary proceedings based on conduct before this Court by issuing an order to show cause under this rule that identifies the basis for imposing discipline.
- (c) Reciprocal Discipline. An attorney who practices before this Court shall provide the Clerk of this Court with a copy of any order or other official notification that the attorney has been subjected to suspension or disbarment in another jurisdiction. When this Court learns that a member of the bar of this Court has been disbarred or suspended from the practice of law by any court or other competent authority or resigns during the pendency of disciplinary proceedings, the Clerk shall issue an order to show cause why the attorney should not be suspended or disbarred from practice in this Court.
- (d) Response. An attorney against whom an order to show cause is issued shall have twenty-eight (28) days from the date of this order in which to file a response. The attorney may include in the response a request for a hearing pursuant to Federal Rule of Appellate Procedure 46(c). The failure to request a hearing will be deemed a waiver of any right to a hearing. The failure to file a timely response may result in the imposition of discipline without further notice.

- (e) Hearings on Disciplinary Charges. If requested, the court will hold a hearing on the disciplinary charges, at which the attorney may be represented by counsel. The Court may refer the matter to an appellate commissioner or other judicial officer to conduct the hearing. In appropriate cases, the court may appoint an attorney to prosecute charges of misconduct.
- (f) Report and Recommendation. If the matter is referred to an appellate commissioner or other judicial officer, that judicial officer shall prepare a report and recommendation. The report and recommendation shall be served on the attorney, and the attorney shall have twenty-one (21) days from the date of the order within which to file a response. The report and recommendation together with any response shall be presented to a three-judge panel.
- (g) Final Disciplinary Action. The final order in a disciplinary proceeding shall be issued by a three-judge panel. If the court disbars or suspends the attorney, a copy of the final order shall be furnished to the appropriate courts and state disciplinary agencies. If the order imposes a sanction of \$1,000 or more, the court may furnish a copy of the order to the appropriate courts and state disciplinary agencies. If a copy of the final order is distributed to other courts or state disciplinary agencies, the order will inform the attorney of that distribution.
- (h) Reinstatement. A suspended or disbarred attorney may file a petition for reinstatement with the Clerk. The petition shall contain a concise statement of the circumstances of the disciplinary proceedings, the discipline imposed by this Court, and the grounds that justify reinstatement of the attorney.
- (i) Monetary Sanctions. Nothing in the rule limits the Court's power to impose monetary sanctions as authorized under other existing authority.

(New 1/1/2002)

**CIRCUIT ADVISORY COMMITTEE NOTE
REGARDING MONETARY SANCTIONS**

The Court may impose monetary sanctions as follows:

(1) *Against a party, its counsel, or both, under FRAP 38, where the Court determines that "an appeal is frivolous, it may award just damages and single or double costs to the appellee."*

(2) *Against a party, its counsel, or both under 28 U.S.C. § 1912, "[w]here a judgment is affirmed by . . . a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs."*

(3) Under 28 U.S.C. § 1927, where counsel "so multiplies the proceedings in any case unreasonably or vexatiously" counsel "may be required by the court to satisfy personally the excess costs, expenses and attorneys' fees reasonably incurred because of such conduct."

(4) Under Circuit Rules 17-3 and 30-2, against counsel who "vexatiously and unreasonably increases the cost of litigation by inclusion of unnecessary material in the excerpts of record."

(5) Under Circuit Rule 42-1, against counsel for "failure to prosecute an appeal to hearing as required" by FRAP and the Circuit Rules.

(6) Against counsel for failure to comply with the requirements of FRAP 28 and Circuit Rules 28-1 through 28-3, dealing with the form and content of briefs on appeal. See e.g., Mitchel v. General Electric Co., 689 F.2d 877 (9th Cir. 1982).

(7) Against counsel for conduct that violates the orders or other instructions of the Court, or for failure to comply with the Federal Rules of Appellate Procedure or any Circuit Rule.

(8) Under the inherent powers of the Court. See e.g., Chambers v. Nasco, Inc., 501 U.S. 32, 45-50 (1991); Roadway Express Inc. v. Piper, 447 U. S. 752, 764-67 (1980); and Golden Eagle v. Burroughs Corp., 809 F.2d 584 (9th Cir. 1987).

(9) As a form of discipline under FRAP 46(c) and Circuit Rule 46-2, with notice of such sanctions provided to the appropriate courts and state disciplinary agencies when the court deems such notice to be justified. (Rev. 1/1/2002)